

**REPORT ON PROPOSED INDIANA AMENDMENTS TO THE
2007 ABA MODEL CODE OF JUDICIAL CONDUCT**

**SUBMITTED BY THE ETHICS AND PROFESSIONALISM COMMITTEE
OF THE JUDICIAL CONFERENCE OF INDIANA
TO
THE INDIANA SUPREME COURT**

DECEMBER 5, 2007

The Ethics and Professionalism Committee of the Judicial Conference of Indiana, having reviewed the 2007 ABA Model Code of Judicial Conduct and submitted its proposed Indiana Code of Judicial Conduct to the Indiana Supreme Court, presents the following Report of its suggested amendments to the 2007 Model Code.

A subcommittee, appointed by Chief Justice Randall T. Shepard, met on August 3, August 31, September 20, and October 12, 2007 to review the Model Code and to consider appropriate amendments to the Model for recommended adoption in Indiana. On November 9, 2007, the Ethics and Professionalism Committee met in Indianapolis and ratified the subcommittee's proposed new Indiana Code of Judicial Conduct. Accompanying this Report is the Committee's proposed Rule in two formats: the 2007 ABA Model Code with added text shown by underlines and deleted text shown by strikeouts, and the proposed Indiana Code as it would appear after the suggested amendments. Also with this Report is a list of Committee members.

The Committee made the following proposed amendments to the Model Code:

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- The title of Rule 2.13 was changed from "Administrative Appointments" to "Hiring and Administrative Appointments."
- The Committee added Rule 2.17, "Prohibiting Broadcasting of Proceedings."
- The title of Rule 3.3 was changed from "Testifying as a Character Witness" to "Acting as a Character Witness."
- The title of Rule 3.15 was changed from "Reporting Requirements" to "Financial Reporting Requirements."
- The title of Rule 4.3 was changed from "Activities of Candidates for Appointive Judicial Office" to "Activities of Candidates for Appointment to Judicial Office."
- The Committee added Rule 4.5, "Political Activities of Nonjudicial Court Employees."

PREAMBLE AND SCOPE

The Committee made no amendments to the Preamble and Scope, except to delete the word “Model” from the references to the Code of Judicial Conduct.

TERMINOLOGY

- The Committee amended the Rule citations in the Terminology Section, where needed, to conform to substantive changes in the Rules.
- The Committee deleted the term “Aggregate” because the Rules to which it pertains are not recommended for adoption in Indiana.
- The Committee added definitions of “Continuing Part-Time Judge,” “Periodic Part-Time Judge,” and “Pro Tempore Part-Time Judge.”
- The Committee amended the definition of “Judicial Candidate” without changing its meaning.
- The Committee deleted the definition of “Member of the Candidate’s Family,” as the phrase is not used in any Rule.

APPLICATION SECTION

- The Committee amended the first paragraph of this Section to more accurately describe the focus of the Application Section from *when* the Code applies to *to whom* it applies.

Application I. – Applicability of This Code

- The Committee moved the definition of “judge” to paragraph (A) from paragraph (B) and expanded the list of “judges” to specifically include Justices, appellate and tax court judges, judges of the Circuit, Superior, County, Small Claims, and City and Town Courts, Senior Judges, Magistrates, court commissioners, referees, judges pro tempore, private judges, and special masters. The Committee deleted the reference to justices of the peace.
- In paragraph (A), the Committee amended the language to state more directly that the Code applies to all full-time and part-time judges unless exceptions for part-time judges are stated later in the Section.
- The Committee deleted the statement in the Model that the Code applies to the “administrative law judiciary” and added language to paragraph (A) specifically stating that the Code does not apply to administrative law judges and hearing officers of state agencies outside the judicial branch, because they are not subject to the jurisdiction of the Indiana Supreme Court. The Committee also excluded

mediators and arbitrators as subject to the Code of Judicial Conduct because they are not judicial officers.

- The Committee amended the Application Section generally to include references to three, rather than to four, categories of part-time judges.

Application II. – Retired Judge Subject to Recall

- The Committee deleted this section as inapplicable in Indiana.

Application III. – Continuing Part-Time Judge

Application IV. – Periodic Part-Time Judge

Application V. – Pro Tempore Part-Time Judge

- The Committee changed these to Application II., III., and IV. in light of the deletion of Model Application II.
- The Model Code included Rule 4 (political and campaign activities) in the list of Rule provisions *not* applicable to continuing part-time judges. The Committee deleted those exceptions, binding continuing part-time judges to Rule 4, first because some elected judges in Indiana are part-time judges and, second, to maintain current rules in Indiana about the applicability of the rule to continuing part-time judges.
- The Model Code's Rules on Continuing Part-Time and Periodic Part-Time Judges contain provisions that they may not act as lawyers in proceedings in which they served as judges, but the Model does not apply the same Rule to Pro Tempore Judges. (Model III. (B) and IV. (B)). Additionally, the Model includes a Comment only to its Rule on Continuing Part-Time Judges that a continuing part-time judge may act as a lawyer in a proceeding in which he or she served as judge only with the informed consent of all parties and pursuant to the Rules of Professional Conduct. The Committee deleted that Comment and amended all three Rules so that each states that a former part-time judge may not serve as a lawyer in a related proceeding "except as permitted by the Rules of Professional Conduct."

Application VI. – Time for Compliance

- The Committee made no changes to this Section other than to change it to Application V. instead of VI., in light of the deletion of II.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1: *Compliance with the Law*

No amendments

Rule 1.2: *Promoting Confidence in the Judiciary*

No amendments

Rule 1.3: *Avoiding Abuse of the Prestige of Judicial Office*

- The Committee amended Comment [3] to make it clear that a judge may not only “cooperate” in the process of judicial selection and respond to inquiries from appointing authorities, but may initiate communication and write letters of recommendation without violating Rule 1.3.

CANON 2

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

Rule 2.1: *Giving Precedence to the Duties of Judicial Office*

No amendments

Rule 2.2: *Impartiality and Fairness*

No amendments

Rule 2.3: *Bias, Prejudice, and Harassment*

No amendments

Rule 2.4: *External Influences on Judicial Conduct*

No amendments

Rule 2.5: *Competence, Diligence, and Cooperation*

- The Committee added “and promptly” to Rule 2.5(A). The Model Rule states, “A judge shall perform judicial and administrative duties competently and diligently.” Indiana’s current Canon 3B(9) states, “A judge shall dispose of all judicial matters fairly, promptly, and efficiently.” While the notion of judicial fairness adequately is governed by other provisions of the Model, the Committee saw no reason to eliminate promptness from a judge’s judicial and administrative duties.

Rule 2.6: *Ensuring the Right to Be Heard*

No amendments

Rule 2.7: *Responsibility to Decide*

No amendments

Rule 2.8: *Decorum, Demeanor, and Communication with Jurors*

No amendments

Rule 2.9: *Ex Parte Communications*

- The Committee added Comments [8] and [9] to this Rule to state that a judge does not violate the rule against ex parte communications by consulting with the Indiana Judicial Center or State Court Administration about legal and procedural issues or by teaching or attending courses in continuing legal education.

Rule 2.10: *Judicial Statements on Pending and Impending Cases*

No amendments

Rule 2.11: *Disqualification*

- Model Rule 2.11(A)(4) provides that a judge must disqualify if he or she knows that a party, lawyer, or law firm contributed a certain amount to the judge's campaign. (The specific amount is to be set by each jurisdiction). The Committee deleted this Rule because it was impossible to designate a specific "trigger" contribution workable throughout Indiana, and because it found adequate the Rules that candidates' committees may accept only reasonable amounts and that a judge must disqualify when his or her impartiality reasonably might be questioned.
- Therefore, Rule (A)(5) and (6) is renumbered to Rule (A)(4) and (5).
- The Committee deleted Model Rule 2.11(C) on waiver of disqualification in keeping with Indiana's prior rejection of that option.

Rule 2.12: *Supervisory Duties*

No amendments

Rule 2.13: *Administrative Appointments*

- The Committee amended the title of this Rule to “Hiring and Administrative Appointments” because the Rule governs both, and amended the language in paragraph (A) accordingly. The Committee also condensed Model Rule 2.13(A)(1) and (2) into 2.13(A) only, and added language that a judge’s hiring and administrative appointments shall be based on merit and necessity.
- The Model Rule continues the existing language in the former Model as well as in Indiana’s current Code that a judge must “avoid” nepotism and favoritism. The Committee amended the Rule to state that a judge shall not engage in nepotism or favoritism, and added a Comment that extraordinary circumstances may relieve a judge from the obligations of the Rule against nepotism and that a judge should consult the Qualifications Commission or its advisory opinions in making that determination.
- The Committee deleted Model Rule 2.13(B), which provides that a judge may not appoint a lawyer to a position if the lawyer contributed more than a certain amount to the judge’s campaign. As with a similar provision from the Model’s disqualification Rule, the Committee found it unfeasible to set a certain amount applicable throughout Indiana, and believes the general prohibition against favoritism suffices.
- The Committee added to Comment [1], the list of appointees of a judge, to include guardians ad litem and special advocates, but deleted the reference to clerks, secretaries, and bailiffs as “appointees.”

Rule 2.14: *Disability and Impairment*

No amendments

Rule 2.15: *Responding to Judicial and Lawyer Misconduct*

- The Committee added the word “credible” to paragraphs (C) and (D), so that a judge who receives *credible* information that a judge or lawyer has violated the Code must take appropriate action. This is consistent with the current rule in Canons 3D(1) and 3D(2).
- The Committee incorporated into Canon 2 a Rule against broadcasting court proceedings, currently in Canon 3B(12). The proposed Rule 2.17 is identical to the current rule, with the exception that the Committee added to the first sentence of the prohibition, “Except with prior approval of the Indiana Supreme Court,” in recognition of the fact that the Court does, from time to time, authorize recording of court proceedings otherwise prohibited by Canon 3B(12).

CANON 3

**A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND
EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT
WITH THE OBLIGATIONS OF JUDICIAL OFFICE.**

Rule 3.1: *Extrajudicial Activities in General*

No amendments

**Rule 3.2: *Appearances before Governmental Bodies and Consultation with
Government Officials***

No amendments

Rule 3.3: *Testifying as a Character Witness*

- The Committee amended the title of Rule 3.3 to “Acting as a Character Witness” because the Rule addresses vouching for character as well as testifying in an adjudicatory proceeding.
- The Committee reorganized the language in Rule 3.3, placing “except when duly summoned” before the prohibition against vouching for a person’s character.
- The Committee added Comment [2] to the effect that a judge who receives a subpoena to testify as a character witness and who is in a unique position to do so may submit that testimony by affidavit upon a reasonable certainty that all parties to the proceeding have agreed to the receipt of the judge’s testimony in that manner, or that the fact-finder has ordered it. This Comment is in recognition of the fact that judges often properly are called as character witnesses in attorney and judicial disciplinary matters and should under certain circumstances be permitted to submit their testimony by affidavit.
- The Committee added Comment [3] to the effect that this Rule does not prohibit a judge from writing a recommendation in a non-adjudicatory proceeding.

Rule 3.4: *Appointments to Governmental Positions*

- The Committee added the phrase, “except with prior approval of the Indiana Supreme Court” to this prohibition against a judge serving on a governmental committee not concerned with the law, to conform with the language in Indiana’s current Canon 4C(2).

Rule 3.5: *Use of Nonpublic Information*

No amendments

Rule 3.6: *Affiliation with Discriminatory Organizations*

No amendments

Rule 3.7: *Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities*

- The Committee added to the beginning of Rule 3.7(A), stating, “A judge may not directly solicit funds for an organization” because, although the Rule clearly was intended to prohibit direct solicitation, the prohibition is not stated in the Model Rule.
- Rule 3.7(a)(1) through (6) is a list of activities not prohibited by the Rule. In Paragraph (1), the Committee added “volunteering services or goods at fund-raising events” to clearly permit that level of assistance and participation.
- In Paragraph (4), the Committee amended the language from “a judge may participate” to “a judge may do so” because of the vagueness of the word “participate” in that context.
- The Committee amended Comment [3] to clarify that attendance at fund-raising events and volunteering services or goods is not a violation of the Rule. The Committee deleted the specific references to serving as an usher or food server because those activities are among any number of other specific examples of permitted service.
- The Committee added Comment [6] to the effect that judges, as parents, may assist their children in fund-raising activities where the sums are nominal and the procedures are not coercive. This notion currently is in the Commentary to Indiana’s Canon 4C(3) and is in recognition of a judge’s need to continue, reasonably, to act as a parent.

Rule 3.8: *Appointments to Fiduciary Positions*

No amendments

Rule 3.9: *Service as Arbitrator or Mediator*

No amendments

Rule 3.10: *Practice of Law*

- The Committee added “This does not prohibit the practice of law pursuant to military service” in recognition of the fact that many of Indiana’s judicial officers serve as lawyers in the military without compromising the judiciary or their duties as judges.

- The Committee added Comment [2] to clarify that the assistance a judge may offer a family member in legal matters may not include signing pleadings, appearing in court, or negotiating on behalf of the family member.

Rule 3.11: *Financial, Business, or Remunerative Activities*

The Model Code’s “No Business” Rule

The ABA Model includes, in effect, a “no business” rule. Under the Model, a judge only may hold and manage the judge’s and judge’s family’s investments, but may not serve as an officer, director, manager, general partner, or employee of any business, except the judge may manage or participate in closely-held family businesses and businesses primarily engaged in investments of the judge’s resources. By contrast, under Indiana’s current rule, Canon 4D(2), a judge not only may hold and manage investments and real estate, but may engage in other remunerative activity, including the operation of a business. The Committee considered the absence of actual problems known to the Committee under the current Rule and the hardship a change in Indiana’s long-standing rule would create, and determined to recommend maintaining Indiana’s current rule on business activities. Therefore, the Committee proposes the following amendments:

- The Committee rewrote Rule 3.11, striking Model Rule 3.11(B)(1) and (2), and rearranged the Rule so that it begins with the general prohibitions against financial activities interfering with judicial duties.
- Comment [1] was modified to conform to Indiana’s existing rule on business activities, and the Committee added a sentence to the effect that a judge may not in any way use or permit the use of the judicial position in the judge’s financial activities.

Rule 3.12: *Compensation for Extrajudicial Activities*

No amendments

Rule 3.13: *Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value*

Three Groups of Gifts, Loans, and Other Things of Value

The Model Rule 3.13 divides gifts and loans into three categories: those which may never be accepted because to do so would undermine the integrity, impartiality, and independence of the judiciary (Rule 3.13(A)); those which may be accepted at any time and are not subject to reporting (Model Rule 3.13(B)); and those which may be accepted but must be reported if above the value determined in Rule 3.15 (Model Rule 3.13(C)). The Committee made the following changes to Rule 3.13(B) and (C):

- Instead of placing gifts incident to public testimonials and invitations to bar functions and charitable and civic events in the group of gifts in (C) which must be reported, the Committee moved those two categories to (B) among the other gifts which may be accepted without reporting. The Committee determined that the risk to the judiciary of a judge accepting these types of gifts was relatively low, which is the reason the other items are categorized accordingly.

Gifts and Loans Always Subject to Reporting Gifts and Loans from Lawyers and Parties

The gifts and loans under paragraph (C), gifts and loans which may be accepted but must be reported, are, essentially, any other gift or loan not itemized in Rule 3.13(B). However, the Committee found the ABA Model language problematic. That section in the Model states, “[A] judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15: ... gifts, loans, bequests, benefits, or other things of value, *if* the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are like to come before the judge.” (Emphasis added).

The Committee considered whether the drafters of the Model Code intended to state that a judge may accept these gifts *even if* the source is a lawyer or party; in any case, the Committee felt that the Code of Judicial Conduct must easily be understood by the public as well as by the judiciary, and was troubled by this language, which seemingly validates gifts from lawyers and parties so long as they are reported if over the value set out in Rule 3.15. Although the existing rule in Indiana and in the former Model imposes a virtual lifetime ban on the receipt of gifts from lawyers or parties who ever appeared before the judge and, as such, does not take into account a significant span of time and change of circumstances between, for example, a one’s appearance before a judge and the judge’s receipt of a gift from that person, the new Model language seemed to the Committee to have gone too far in the opposite direction. Therefore, the Committee changed the Rule as follows:

- The Committee amended the language about the third class of gifts to provide that a judge may accept any other gift or loan but must report its receipt under Rule 3.15, and the Committee deleted the references to gifts and loans from attorneys or parties.
- The Committee then added cautionary language to Comment [2], following the language about gifts from friends in whose cases the judge would disqualify, stating that, as with gifts and loans from donors in whose cases the judge would disqualify, the receipt of ordinary social hospitality does not undermine the integrity of the judiciary. However, gifts and loans not listed in paragraph (B) pose the greatest risk and should be accepted only after careful scrutiny of Rule 3.13(A). The proposed Comment goes on to suggest that in only the rarest circumstances may a judge accept a gift or loan, and report it, from someone who has or might appear before the judge.

Rule 3.14: *Reimbursement of Expenses and Waivers of Fees or Charges*

- The Committee made no changes to the Rule governing a judge's receipt of reimbursement of expenses and tuition or to the Comments, including the Comments about the factors a judge must consider in deciding whether to accept reimbursement for attendance at an event sponsored by an organization. However, the Committee added Comment [4] to the effect that that Rule 3.14(C) does not require a judge to report reimbursement from governmental entities, subdivisions, or agencies, including the Indiana Judicial Center and the Indiana Judges Association.

Rule 3.15: *Reporting Requirements*

- The Committee amended the title of this Rule to "Financial Reporting Requirements" to facilitate the distinction between this Rule and the Rules about reporting misconduct.
- The Committee inserted into Rule 3.15(A)(2) \$150.00 as the value above which gifts and other things of value received under Rule 3.13(C) must be reported.
- The Committee inserted into Rule 3.15(A)(3) \$150.00 as the value above which reimbursed expenses must be reported under Rule 3.14(A).
- The Committee amended Rule 3.15(C) to require annual reporting on the Statement of Economic Interests, and deleted the requirement that a judge must report reimbursement or waiver of fees within thirty days.
- The Committee deleted Rule 3.15(D) which stated that these reports are to be filed as public documents, because the Statement of Economic Interests is a public document, and deleted the suggestion that the reports be posted on a court's website.
- The Committee added Comment [1] that a judge may report extrajudicial income from performing weddings and from the prior practice of law in a lump sum and need not report the sources of the income.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Model Canon 4 and Its Applicability in Indiana

The ABA Model Code treats all judges and candidates virtually identically, regardless of whether they are partisan, nonpartisan, or retention judges. Consequently, the Committee found that the Model Code was too restrictive in some areas and unnecessarily permissive in others.

Except when running for election, no judge, under the Model, may attend party functions or contribute to political organizations. This is vastly more restrictive than Indiana's current rules under which judges, other than retention judges, may at any time attend party gatherings and voluntarily contribute to political parties. (Although the current Code does not address it, the Committee recommends that nonpartisan candidates not be permitted to contribute to political parties.) Moreover, Indiana's current Code permits candidates, other than retention candidates, to endorse any candidate for public office running in the same election cycle, whereas, under the Model, candidates may endorse (and also may oppose) only candidates running for the same judicial office on the same court. (The Committee recommends continuing to prohibit judges from opposing any candidates other than their opponents.)

On the other hand, the Model's uniform treatment of all types of judges when they are running would result in a considerable expansion of some political activities in Indiana. Under the Model, any judge, whether running for partisan or nonpartisan election or for retention, not only may establish a committee, seek endorsements, and campaign, but may contribute to political parties and attend party events and may contribute to other candidates for public office and attend their events. With the exception of the rule permitting all judges to form committees, seek endorsements, and campaign generally, which the Committee recommends, it believes that candidates for retention need not, and should not, attend party or candidate functions or contribute to political parties and candidates, and it believes candidates running in nonpartisan elections should not contribute to political parties or candidates or attend candidates' functions.

The Committee determined that the significant distinctions among the methods by which Indiana's judges are elected or selected required separate treatment within Canon 4, taking into account the different degrees of political involvement necessary for each. It proposes amending Indiana's Rules to permit retention candidates to form committees and to campaign, rather than continuing the existing rule that they must wait for active opposition. It recommends continuing to permit partisan-elected judges to identify themselves as members of political parties, and to attend party functions and contribute to parties at any time, and it recommends continuing to permit nonpartisan elected judges to, at any time, attend party functions, but on a nonpartisan basis. It recommends continuing to permit candidates in partisan elections, but only those judges, to contribute to and attend functions for other candidates for public office running in the same election cycle. Finally, it recommends adopting the Model provision that only candidates in partisan elections may identify themselves as candidates of political parties and seek or use endorsements from political parties.

Rule 4.1: *Political and Campaign Activities of Judges and Judicial Candidates in General*

- In Rule 4.1(A)(5), the Committee added that, unless authorized by other sections, a judge may not identify himself or herself as a *member* of a political organization, in addition to the prohibition in the Model against identifying oneself as a candidate of a political organization (permissible for candidates running in partisan elections).
- In Rule 4.1(A)(10), the Rule against using court resources in campaigns, the Committee added “or for any political purpose.”
- The Committee moved Model Rule 4.1(B), the prohibition against a judge or candidate permitting others to do on his or her behalf what he or she may not do, to an added item in 4.1(A), 4.1(A)(14), including it in the list of generally prohibited activities.
- As already indicated, the Committee felt that nonpartisan and partisan-elected judges should be permitted to engage in some political activities, though not identical, at any time. Therefore, the Committee added 4.1(B) and 4.1(C). Rule 4.1(B) permits nonpartisan judges (and candidates), at any time, to attend party functions on a nonpartisan basis, and to purchase up to two tickets for an event. Rule 4.1(C) permits partisan-elected judges (and candidates), at any time, to identify themselves as members of parties, to voluntarily contribute to parties, and to attend party functions, purchasing up to two tickets for an event.
- The Committee amended the title of the Comment section following Rule 4.1 from “General Considerations” to “Participation in Political Activities” to better describe the substance of the Comment. The Committee amended the text of the Comment to include a statement that public confidence in the judiciary is eroded when it is perceived that judges are subject to political influence, and restated the purpose of the Canon to express that it permits only narrowly-tailored exceptions to the general prohibitions against political activities.
- The Committee moved Comment [2], which states that the Canon becomes applicable to a person when he or she becomes a candidate, to the Comment section following the Rules specific to candidates.
- The Committee then deleted Comments [3] and [4] from the Model because [3] adequately was expressed by Comment [1] and because Comment [4] merely restated the Rules.
- The Committee amended Comment [5] (now proposed Comment [3]) pertaining to political conduct on behalf of family members. The Model Comment expressed a strict prohibition against a judge becoming “involved” in a family

- The Committee deleted from Comment [6] from the Model (proposed Comment [5]) the reference to participation in a “caucus type election procedure” as not applicable in Indiana.
- The Committee added a Comment, proposed Comment [5], that participating in public inaugural events and other public ceremonies does not constitute political activity.
- The Committee moved the long section of Comments titled “Statements and Comments Made During A Campaign for Public Office” to more logically follow the Rules applicable to judicial candidates and changed the title to “Statements and Comments Made By Candidates For Judicial Office.”

Rule 4.2: *Political and Campaign Activities of Judicial Candidates in Public Elections*

- The Committee amended Rule 4.2(A), which describes the broad rules of ethics for judicial candidates, by deleting as unnecessary the phrase “of this jurisdiction” from 4.1(A)(2).
- The Committee added Rule 4.2(A)(5), currently Canon 5A(4), which requires a candidate to notify the Indiana Commission on Judicial Qualifications of his or her candidacy within a week after becoming a candidate.
- For reasons explained above, the Committee amended Rule 4.2(B) and (C), and created Rule 4.2(B) (candidates for retention); 4.2(C) (candidates for nonpartisan election); and, Rule 4.2(D) (candidates for partisan election).
- Proposed Rule 4.2(B) permits candidates for retention, within one year prior to the retention election, to establish a committee, campaign, endorse, contribute to, and attend functions for other retention candidates for the same office, and to seek and use endorsements except from partisan political organizations.
- Proposed Rule 4.2(C) permits candidates for nonpartisan election, within one year prior to the election to, in addition to those activities permitted at any time under Rule 4.1(B), establish a committee, campaign, endorse, contribute to, and attend functions for other nonpartisan candidates running for the same judicial

office, and to seek and use endorsements except from partisan political organizations.

- Proposed Rule 4.2(D) permits candidates for partisan election, within one year prior to the election, in addition to those activities permitted at any time under Rule 4.1(C), to establish a committee, campaign, endorse and contribute to other candidates for public election running in the same cycle, to attend their events and purchase up to two tickets, to identify themselves as candidates of political organizations, and to seek and use endorsements, including from political organizations.
- In Rules 4.2(C) and 4.2(D), the Committee added that candidates for nonpartisan and partisan elective office may speak on behalf of their own candidacies *or against their opponents' candidacies*, because Rule 4.1(A)(3) otherwise prohibits public opposition of others.
- The Committee added Comment [3] to the effect that a full-time or continuing part-time judicial officer, otherwise bound by Rule 4.1, may, as a limited exception to the Rule, support the candidacies of the judge or judges for whom they serve.
- The Committee deleted Model Comments [3], [4], and [5] because they essentially were restatements of portions of Rule 4.2.
- The Committee inserted after Rule 4.2 the Comment section from the Model titled, "Statements and Comments Made During a Campaign For Judicial Office," and amended the title to "Statements and Comments Made By Candidates For Judicial Office" and renumbered the Comments.

Rule 4.3: *Activities of Candidates for Appointive Judicial Office*

- The Committee amended the title of this Rule to "Activities of Candidates for Appointment to Judicial Office" for clarification.
- The Committee added Rule 4.3(C) to address the limits on political activities by candidates for appointment to a judicial office, depending upon whether they are seeking appointment to a retention, nonpartisan, or partisan-elected office. Under this Rule, a candidate for appointment to judicial office must conform to the limits on political activities applicable to judges holding that office when they are not running.
- The Committee added Comment [2] to advise candidates for appointment to office to exercise caution in soliciting letters of recommendation, particularly from lawyers.

Rule 4.4: *Campaign Contributions*

- The Committee amended Rule 4.4(A) to refer specifically to candidates for retention, nonpartisan, or partisan election, rather than candidates “subject” to public election.
- The Committee deleted from Model Rule 4.4(B) the dollar amount above which a campaign contribution may not be accepted. The Committee decided that it was unfeasible in Indiana to set a contribution limit applicable throughout the State, and believes the “reasonable” standard suffices.
- The Committee inserted into the Model Rule the existing time limits for a committee’s receipt of contributions – one year before the election and ninety days after.
- The Committee deleted from Model Rule 4.4(B)(3) the language specifying the content and timing of campaign contribution reports as adequately covered by State election law.

Rule 4.5: *Activities of Judges Who Become Candidates for Nonjudicial Office*

- The Committee amended Rules 4.5(A) and (B) to refer to candidates for *election to nonjudicial office* rather than to candidates for *nonjudicial elective office*, and to candidates for *appointment to nonjudicial office*, rather than to candidates for *nonjudicial appointive office*.
- The Committee added Comment [1], a statement that, for the purposes of the resign-to-run rule, the office of Prosecuting Attorney is a nonjudicial office, to address the fact that, in some other contexts, the office of Prosecutor is referred to as a judicial office.
- The Committee amended Comment [2] (proposed Comment [3]), because the deleted language restated the notions already expressed in Comment [1] (proposed Comment [2]).

Rule 4.6: *Political Activities of Nonjudicial Court Employees*

The Committee added this Rule to maintain the current rules in Indiana limiting some political activities by nonjudicial employees, depending upon the courts within which they work.

- Under proposed Rule 4.6(A), retention judges must hold their nonjudicial employees to the same standards applicable to the judges.
- Under proposed Rule 4.6(B), partisan and nonpartisan judges must not permit their nonjudicial employees to run for or hold partisan-elected office or hold office in a party’s central committee.

- Comments [1] and [2] explain the reasons for rules prohibiting some political activities by court employees.
- Comment [3] states that the standards for nonjudicial employees of retention judges are those applicable to the judges when they are not running for retention.
- Comment [4] clarifies that court employees who perform judicial functions are bound directly by the Code of Judicial Conduct.